

83-164-F

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January 4, 1984

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Mr. Stanley J. Emery, Acting Fire Marshal  
Division of Safety Services  
Department of Safety  
Hazen Drive  
Concord, New Hampshire 03301

Dear Mr. Emery:

By memo dated December 13, 1983, you requested our interpretation of a provision of the National Fire Protection Association (NFPA) Code concerning the dispensing of flammable and combustible liquids at locations not open to the general public at which there is no attendant or supervisor. In our opinion, Class I liquids, as defined by the NFPA, may be dispensed at locations not open to the public which are used by commercial, industrial, governmental or manufacturing establishments for fueling vehicles used in connection with their businesses. Any dispensing of these liquids at unattended or unsupervised locations which does not meet these limitations would violate state rules.

RSA 153:5 gives the fire marshal the authority to adopt provisions of the NFPA Code concerning flammable fluids and compounds. Pursuant to this authority, the fire marshal adopted Fir 402.01, which in turn adopts the NFPA Flammable and Combustible Liquids Code, Standard 30, dated 1977, as a rule. The 1978 amendment to Section 7-7.3.3 of that code cited in your memorandum, however, has never been adopted as a state rule. Since the law does not state that any amendments to that code are automatically adopted as a state rule, each such amendment must be adopted under the state administrative procedures act in order for it to have the effect of law in New Hampshire. The 1977 version of Section 7-7.3.3 is therefore the provision which is currently in effect. This section reads as follows:



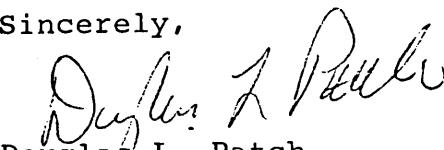
"Dispensing of Class I liquids at locations not open to the public does not require an attendant or supervisor. Such locations may be used by commercial, industrial, governmental or manufacturing establishments for fueling vehicles used in connection with their businesses."

Any dispensing of Class I liquids to the general public at a location that does not have an attendant or supervisor, for a purpose that does not fall within those listed in Section 7-7.3.3, would therefore be in violation of Section 7-7.3.1 of the NFPA Code. This section requires every service station open to the public to "have an attendant or supervisor on duty whenever the station is open for business."

Where Class I liquids are being dispensed at an unattended and unsupervised location to any person who has a key and where the liquids will be used in a pleasure vehicle, or for any use not in connection with a business, the code is being violated. This is especially true if the company dispensing the liquid is advertising that any member of the general public who has a good credit rating may obtain such a key, as is apparently the case in the situation you have described to us.

I trust this has been responsive to your question. Please let us know if you require anything further.

Sincerely,



Douglas L. Patch  
Assistant Attorney General  
Division of Legal Counsel

DLP:ab

cc: Mr. Richard M. Flynn, Commissioner  
Mr. Earl M. Sweeney, Deputy Commissioner  
Mr. Robert X. Danos, Director

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